

BEFORE THE

## Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 72.202(b)  
Table of Allotments  
FM Broadcast Stations  
(East Wenatchee, Ephrata  
and Chelan, Washington)

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MM Docket No. 93-221

RM-8265

To: The Chief, Allocations Branch

REPLY COMMENTS OF KSEM, INC.

KSEM, Inc., the licensee of Station KDRM(FM) (hereinafter "KSEM"), Channel 257A, Moses Lake, Washington, by its attorneys, hereby submits its Reply Comments in the above-referenced rulemaking proceeding.

1. On September 24, 1993, KSEM filed Comments and a Counterproposal in this proceeding. KSEM proposed the deletion of Channel 230C2 from Ephrata, Washington, the allotment of Channel 230C3 to Moses Lake, Washington in place of Channel 257A and the modification of Station KDRM(FM)'s license to Channel 230C3. KSEM affirmed its intention to promptly apply for Channel 230C3 at Moses Lake and to construct, operate and seek a license for that facility. To effectuate this proposal, KSEM proposed the allotment of Channel 229 to Cle Elum, Washington as a Class C3 station instead of to East Wenatchee, Washington as a Class C2. Brian J. Lord ("Lord") has also filed Comments and a Counterproposal proposing the allotment of Channel 229C3 at Cle Elum and stating his intention to apply for the construction

permit for Channel 229C3 if it is allotted to Cle Elum.

Northcentral Broadcasting ("Northcentral") filed an Opposition to Order to Show Cause and Counterproposal which proposed the substitution of Channel 234A for 228A at Chelan, Washington and modification of the license of Station KOZI-FM at Chelan to specify operation on Channel 234A.

2. KSEM's Comments and Counterproposal pointed out that the petition for rule making filed by Hartline Broadcasters ("Hartline") seeking the allotment of Channel 229C2 at East Wenatchee, Washington was seriously suspect since on the very day that the Notice of Proposed Rule Making and Order to Show Cause was adopted, Hartline's counsel filed an application on behalf of TRMR, Inc. for Channel 230C2 at Ephrata, Washington -- the very channel that Hartline sought to delete! Accordingly, KSEM argued that Hartline should not be permitted to block a counterproposal in order to safeguard its petition for rulemaking.

3. The facts demonstrate that KSEM's arguments were well-founded. Knowing that the identity of Hartline and TRMR, Inc. was about to be unmasked, counsel for these two applicants has now admitted in Comments filed on behalf of both that they are one and the same. The Comments claim that "Hartline Broadcasters and TRMR, Inc. coincide in this proceeding" and "[i]t is the position of Hartline Broadcasters and TRMR, Inc. that the Commission should proceed with the allotment of Channel 229C2 to East Wenatchee, Washington . . ." (Comments, pp. 2-3).<sup>1/</sup>

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<sup>1/</sup> Hartline/TRMR argue at footnote 2 of their Comments that "[i]t is not entirely clear that [the] refusal of the  
(continued...)

4. Hartline and TRMR are engaged in a serious abuse of the Commission's processes which cannot be tolerated. Their interests do not coincide; they conflict. TRMR's application to use Channel 230C2 at Ephrata is inconsistent with Hartline's petition to allot Channel 229C2 at East Wenatchee which is dependent upon the deletion of Channel 230C2 at Ephrata. Therefore, the representations that Hartline and TRMR will apply for both Channel 230C2 and 229C2 are fraudulent. In Abuses of the Broadcast Licensing and Allotment Processes, 67 RR2d 1526, 1533 (1990), the Commission discussed its concern about non-bona fide proposals affecting allotment proceedings and stated that it would sanction parties who file without the intent to construct and operate a proposed facility. Hartline/TRMR is such a party. Clearly, the Ephrata application was filed simply to preclude counterproposals to Hartline's desired East Wenatchee allotment.

5. The Comments filed by Hartline and TRMR do not even attempt to justify the abusive conduct in which they have engaged or the inconsistencies in their respective proposals. Instead the Comments argue that TRMR is entitled to cut-off protection for its Ephrata application and that it should be allowed to

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1/(...continued)

Commission to propose action with respect to Channel 222C2 at Ephrata comports with Commission precedent." However, the Commission's refusal to propose any action with respect to Channel 222C2 at Ephrata was fully justified because Basin Street Broadcasting filed an application for that Channel on June 7, 1993. It is Commission policy not to reallocate a channel in which interest has been expressed, absent a sufficient reason. See Amendment of Section 73.606(b), Table of Allotments (Casper and Sheridan, Wyoming), 6 FCC Rcd 2880 (1991); Amendment of Section 73.202(b), Table of Allotments (Belen and Grants, New Mexico), 7 FCC Rcd 4655 (1992).

change its city of license to East Wenatchee. In support, Hartline/TRMR cite Conflicts Between Applications and Petitions for Rule Making, 7 FCC Rcd 4917 (1992) and FM Channel and Class Modifications by Application, FCC 93-299, released July 13, 1993. Hartline/TRMR claims that the interplay of these two changes "suggests that the Commission should continue to favorably consider this proposed change in community of license" (Comments, p. 4).

6. Nothing in the Commission's Reports and Orders supports the comments proffered by Hartline/TRMR. First, the 1992 Report and Order was designed to resolve conflicts and reduce the potential for abuse rather than to create abuse. Second, the 1993 Report and Order applies to licensees and permittees -- not mere applicants. Moreover, the Report and Order refuses to permit licensees and permittees to request a change in community of license via the new one-step application process. In fact, TRMR is not eligible at all to seek a change in its community of license. See, Amendment of Table of Allotments (Santa Margarita and Guadalupe, California), 4 FCC Rcd 7887 (1989) which held that the benefits of adjacent channel upgrade proceedings do not apply to applicants. See also, Amendment of Section 73.202(b), Table of Allotments (Caldwell, Texas), 6 FCC Rcd 2050 (1991). Since TRMR has disavowed any intention to build or operate a station at Ephrata, Washington, its Ephrata application must be dismissed. See Calhoun County Broadcasting Co., 57 RR2d 641 (1985).

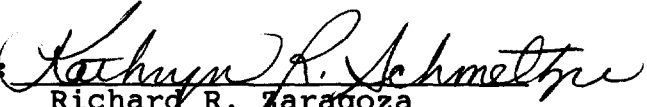
7. Since there is an irreconcilable conflict between the Hartline petition for rulemaking to allot Channel 229C2 to East

Wenatchee, Washington and the TRMR application for Channel 230C2 at Ephrata, Washington, and it is evident that Hartline and TRMR have engaged in an abuse of the Commission's processes, both the Ephrata application and the Hartline petition for East Wenatchee should be dismissed or denied, and KSEM's Counterproposal should be granted.

Respectfully submitted,

KSEM, INC.

By:

  
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Dated: October 12, 1993

CERTIFICATE OF SERVICE

I, SYBIL R. BRIGGS, do hereby certify that I have this 12th day of October, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "REPLY COMMENTS OF KSEM, INC." to the following:

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